bringing actions by fear of counter-suits. As for the other argument, that defendants would be unduly encouraged to bring counter-suits, there is the same short answer that such has not been the result in the past. Further, the argument works both ways. Granting that to allow defendants to maintain actions and recover damages is to encourage them to come into court, surely, to deny the action is to invite litigation of the worst kind—litigation by plaintiffs whose sole object in a large number of cases is to vex the defendant with a law suit. For a collection of the authorities see *Kolka* v. *Jones* (1897) 6 N. D. 461; 21 Am. Law Reg. 281, 353; 2 COLUMBIA LAW REVIEW 124.

THE LATEST INSULAR CASE.—After the annexation of Hawaii one Mankichi was convicted of manslaughter by a criminal procedure other than that described by Amendments V. and VI. If the guarantees afforded by these Amendments apply of their own force to all territory that comes within our sovereignty, the conviction was illegal. Do these Amendments, the others forming the so-called "Bill of Rights," and the other limitations of the Constitution have this inherent force or do they apply merely to the States and to such territory as they have been extended to by treaty or legislation? At the time of the Dred Scott decision it was generally accepted that these limitations were everywhere inherently applicable. Yet, in the Insular case of *Downes* v. *Bidwell* (1900) 182 U. S. 244, BROWN, J., argued that they applied of their own force only within the States, and four other justices, adopting a novel and anomalous doctrine of "incorporation into the Union," concurred in the decision that the limitation as to uniformity of taxation does not necessarily apply to territory merely because it comes within our sovereignty. 1 COLUMBIA LAW REVIEW 436. In upholding the conviction of Mankichi the Supreme Court has reached the same result as to Amendments V. and VI. *Hawaii* v. *Mankichi* (1903) 190 U. S. 197. In the light of these cases it cannot be said with certainty that any of the limitations apply of their own force to our new possessions except those of Amendments I. and XIII. and Art. I., Sect. 9, §§ 3, 8. Radically different as is this interpretation from that of the Dred Scott decision, neither does actual violence to the phrasing of the Constitution. Remembering this fact and the radically different conditions under which the question arose in 1856 and 1900, it is not surprising that such opposite results should have been reached.

Three sets of considerations operated to make the earlier doctrine reasonable and acceptable to its generation. There were circumstances peculiar to the territory we held at that time. The Louisiana Purchase, Florida, the Mexican Cession, were acquired under treaties promising the guaranties of the Constitution. Good faith demanded that they be accorded and, indeed, Marshall, in the case of Florida, held that the treaty itself operated as legislation to confer them. *American Ins. Co.* v. *Canter* (1826) 1 Peters 511. The District of Columbia had been part of States. Then again, in the slavery dispute both sides sought to make use of the application of Amendment V. to the Territories. Finally, there was the feeling that, from the

very nature of our institutions, Americans, in founding the new States of the West, carried with them the fundamental safeguards and customs of Anglo-Saxon liberty. At that time, then, there was no reason in policy for drawing a line between States and Territories; there was every reason in sentiment and policy against doing so. None of these considerations apply to the question as it came up in 1900 in regard to our new possessions. Instead of contiguous territory settled by Americans we are dealing with alien races and tropical islands, whose acquisition was no more contemplated in 1856 than it was in 1789. The prevailing view seems to be that in dealing with the peculiar problems they present it is for the interest of all concerned that the power of the nation should be commensurate with its responsibility; that the rigid application of the limitations of the Constitution might work serious harm.

Natural as it may be that the Court should seek to give effect to this view and reject the doctrine of the last two generations there have stood in the way the *dicta* and even the *ratio decidendi* of several cases. *Loughborough* v. *Blake* (1870) 5 Wheat. 317; *Dred Scott* v. *Sandford* (1856) 19 How. 393; *Callan* v. *Wilson* (1887) 127 U. S. 540; *Springville* v. *Thomas* (1896) 166 U. S. 707. Curiously enough, however, there is no case setting forth the doctrine that the limitations of the Constitution are applicable of their own force to territory that comes within our sovereignty, in which the actual result could not have been correctly reached on other grounds. As has been said, the wording of the Constitution does not stand in the way of these Insular Cases; nor does the interpretation of the framers so far as it can be gathered from their practice. The first ten amendments were adopted to quiet the fears of certain states. Their applicability to the Western territory was not debated by the Congress that framed them, for the reason, perhaps, that practically all of this territory was already protected by the similar guaranties of the Northwest Ordinance, which was regarded as fundamental law. The guaranties of this ordinance, except in regard to slavery, were extended to the territory ceded by North Carolina, to the Mississippi Territory, and later to the Louisiana Territory. Why should this have been done if it had been believed that the amendments applied of their own force? Further, the first legislation for Louisiana was inconsistent with these amendments. It would seem then that the result now reached by the court accords with the practice, at any rate, of the generation that framed the Constitution. The decisions are expressive, however, of a new spirit, of a hesitancy to tie the hands of the Nation in its national enterprises, present and future. They illustrate anew that singular flexibility of our Constitutional Law which permits successive generations to put into effect their own ideals of national policy without formal change in the fundamental law.

RELATION OF STOCKHOLDERS TO A VOTING TRUST.—It does not violate any rule of law for stockholders who own a majority of the stock of a corporation to combine their stock into a pool or into a voting trust and thereby govern the organization and direct the policy of the corporation. Cook, Corporations, sec. 622. *Smith* v. *S. F.*